



COUNTY OF LOS ANGELES

Public Health

JONATHAN E. FIELDING, M.D., M.P.H.
Director and Health Officer

JONATHAN E. FREEDMAN
Chief Deputy Director

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BOARD OF SUPERVISORS

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Michael D. Antonovich
Fifth District

January 13, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL TO ACCEPT A GRANT AWARD FROM THE CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH TO PROVIDE LICENSING AND
CERTIFICATION OF LOCAL HEALTH FACILITIES, CLINICS, AND
AGENCIES/CENTERS FOR FISCAL YEARS 2008-09 THROUGH 2010-11
(ALL SUPERVISORIAL DISTRICTS)
(4 VOTES)**

SUBJECT

Request approval to accept funding from the California Department of Public Health to support inspection, licensing and certification compliance activities for local health facilities, clinics, and agencies/centers in Los Angeles County.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director of the Department of Public Health (DPH), or his designee, to accept the attached Standard Agreement Number 08-85192 (Exhibit I) from the California Department of Public Health (CDPH) to provide grant funding in the amount of \$79,121,610 for Fiscal Years (FY) 2008-09 through FY 2010-11 (or \$26,373,870 per FY), to support DPH licensing inspection and certification compliance activities for local health facilities, clinics, and agencies/centers for which licensure is required under the California Health and Safety Code, at no net County cost.
2. Delegate authority to the Director of DPH, or his designee, to accept and execute any subsequent amendments to the Standard Agreement that permits the rollover of prior FY unused funds, that increases or decreases funds up to 25 percent of the base annual amount, and/or that internally redirects funds, subject to review and approval by County Counsel and the Chief Executive Office, and notification of the Board offices.

3. Authorize the Director of DPH, or his designee, to fill 18 positions, as detailed in Attachment A, in excess of what is currently authorized in DPH's staffing ordinance, pursuant to Section 6.06.020 of the County Code, to implement the activities required to support DPH's performance of inspection, licensing, and certification compliance activities for local health facilities, clinics, and agencies/center during the term of this grant award, 100 percent offset by Standard Agreement Number 08-85192, upon review and approval by the Chief Executive Office.
4. Approve the attached Request for Appropriation Adjustment (Exhibit II) in the amount of \$2,065,000 for FY 2008-09. This Appropriation Adjustment is being requested to increase Salaries and Employee Benefits (S&EB) and Services and Supplies (S&S) appropriation for the activities to be carried out by DPH's Health Facilities Inspection Division.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

CDPH is responsible for statewide licensing and certification of all health facilities, clinics, and agencies/centers (hereafter referred to as "health facilities") operating within the State of California for which licensure is required under the California Health and Safety Code. Examples include: nursing homes, acute care hospitals, and 28 additional categories of health facilities. DPH, for a number of years, has provided local licensing and certification activities on behalf of CDPH. Major services provided by DPH include inspections, consultation, investigation of complaints, verification of compliance with the licensing program, site surveys, issuing facility notifications, and follow-up compliance visits prior to CDPH's issuance of licenses/certifications.

The Health Facilities Inspection Division has experienced significant staff shortages and growing workloads over the last eight fiscal years. The new Standard Agreement with CDPH addresses this shortage by providing funding for increased staffing. The additional staff will be used to complete field investigations, surveys, and follow-up visits to health facilities and to initiate and complete these activities within the time frames required by statutes and regulatory law.

Additionally, CDPH has included language which requires the County to hire nurse-certified Health Facility Evaluators (HFE) and allow the County to maintain sufficient non-nurses to meet Life Safety workload requirements. Approval of these actions will allow DPH to continue licensure and certification compliance verification of local health facilities, clinics, and agencies/centers for FYs 2008-09 through 2010-11, as required by CDPH.

The FY 2008-09 Appropriation Adjustment in the amount of \$2,065,000 is necessary to increase DPH's S&EB and S&S appropriation to support staffing costs and related operating expenses, such as supplies, training, and travel, associated with the inspection and certification of health facilities in the County

Implementation of Strategic Plan Goals

This action supports Goal 1, Service Excellence, Goal 6, Community Service, and Goal 7, Health and Mental Health of the County Strategic Plan by allowing DPH to continue to protect the overall quality of community health facilities through their inspection and certification of these facilities.

FISCAL IMPACT/FINANCING

The total cost to DPH's Health Facilities Inspection Division for providing these licensure and certification services is \$79,121,610 for the period of FY 2008-09 through 2010-11 (or \$26,373,870 per FY) and is 100 percent offset by CDPH Standard Agreement Number 08-85192.

The attached FY 2008-09 Appropriation Adjustment in the amount of \$2,065,000 will increase DPH's S&EB and S&S appropriation to support the Health Facilities Inspection Division's staffing costs and related operating expenses, such supplies, training, and travel and is 100 percent offset by CDPH Standard Agreement Number 08-85192.

FACTS AND PROVISIONAL/LEGAL REQUIREMENTS

Under the Standard Agreement, CDPH retains responsibility for the establishment of program policies, standards, and disciplinary actions relating to licensure, including denials, revocations, and suspensions.

Attachment A provides additional information. Attachment B is the Grant Management Statement as required for grant awards over \$100,000. Exhibit I, CDPH Standard Agreement Number 08-85192, has been approved by County Counsel. Exhibit II is the Appropriation Adjustment.

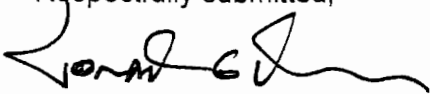
IMPACT ON CURRENT SERVICES (OR PROJECTS)


Approval of the recommended actions will ensure that licensure and certification of County health facilities continues uninterrupted through FY 2010-11.

CONCLUSION

When approved, DPH requires three signed copies of your Board's approval.

Respectfully submitted,



 Jonathan E. Fielding, M.D., M.P.H.
Director and Health Officer

JEF/rdt

Attachments (4)

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors

ATTACHMENT A

PUBLIC HEALTH SERVICES

FISCAL YEAR 2008-09 GRANT FUNDED POSITION STATUS ANALYSIS

GRANT: HEALTH FACILITIES INSPECTION

(1)	(2)	(3)	(4)	(5)
Line No.	Unit Code	Budgeted Position Title	Budgeted Item No.	NEW POSITIONS to be requested for Allocation
1	23622	HLTH FAC CONS-PHARMACY	5535N	2
2	23622	HLTH FAC EVALUATOR I	5702N	0
3	23622	HLTH FAC EVALUATOR, NURSING	5707N	11
4	23622	HLTH FAC EVALUATOR II	5703N	0
5	23622	SR. HLTH FAC EVALUATOR, NRSG	5708N	3
6	23622	HLTH FAC EVALUATOR III	5704N	0
7	23622	SUPG HEALTH FACILITIES EVALUATOR, NSG	5709N	1
8	23622	HLTH FAC CONS-OCCUP THERAPIST	5864N	1
TOTAL				18.0

**Los Angeles County Chief Administrative Office
Grant Management Statement for Grants Exceeding \$100,000**

Department: Public Health Services

Grant Project Title and Description

Health Facilities Licensing and Certification Program

Funding Agency	Program (Fed. Grant #/State Bill or	Grant Acceptance Deadline
California Department of Public Health (CDPH)	Standard Agreement Number 08-85192	ASAP

Total Amount of Grant Funding: \$79,121,610 **County Match Requirements:** N/A

Grant Period: Fiscal Year 2008 - 2011 **Begin Date:** July 1, 2008 **End Date:** June 30, 2011

Number of Personnel Hired Under this Grant: **Full Time:** 18 **Part Time:** 0

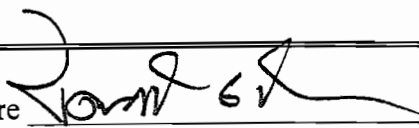
Obligations Imposed on the County When the Grant Expires

Will all personnel hired for this program be informed this is a grant funded program?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Will all personnel hired for this program be placed on temporary ("N") items?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Is the County obligated to continue this program after the grant expires	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If the County is not obligated to continue this program after the grant expires, the Department will:				
a). Absorb the program cost without reducing other services	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
b). Identify other revenue sources (Describe)	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
c). Eliminate or reduce, as appropriate, positions/program costs funded by this grant.	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

Impact of additional personnel on existing space:

Other requirements not mentioned above

Department Head Signature



Date 12.26.08

STANDARD AGREEMENT

STD 213 (CDPH Rev 7/08)

REGISTRATION NUMBER

AGREEMENT NUMBER

08-85192

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

(Also referred to as CDPH or the State)

California Department of Public Health

CONTRACTOR'S NAME

(Also referred to as Contractor)

County of Los Angeles

2. The term of this Agreement is: July 1, 2008 through June 30, 2011**3. The maximum amount of this Agreement is:** \$ 79,121,610
Seventy Nine Million One Hundred Twenty One Thousand Six Hundred Ten Dollars**4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.**

Exhibit A – Scope of Work	10 pages
Exhibit B – Budget Detail and Payment Provisions	4 pages
Exhibit B, Attachment I – Budget (Year 1)	1 page
Exhibit B, Attachment II – Budget (Year 2)	1 page
Exhibit B, Attachment III – Budget (Year 3)	1 page
Exhibit C * – General Terms and Conditions	GIA 101
Exhibit D(F) – Special Terms and Conditions	26 pages
Exhibit E – Additional Provisions	2 pages
Exhibit F – Health Facilities Evaluator Nurse and Consultant Qualification Factors	4 pages
Exhibit G – Contractor's Release	1 page
Exhibit H – Travel Reimbursement Information	2 pages
Exhibit I – HIPAA Business Associate Addendum	7 pages
Exhibit J – Information Confidentiality and Security Requirements	3 pages
Exhibit K – Contract equipment Purchased with CDPH Funds	2 pages
Exhibit L – Inventory/Disposition of CDPH Funded Equipment	2 pages

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

County of Los Angeles

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Jonathan E. Fielding, M.D., M.P.H., Director, Public Health

ADDRESS

313 N Figueroa, Room 708
Los Angeles, CA 90012**STATE OF CALIFORNIA**

AGENCY NAME

California Department of Public Health

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Margie Sunahara, Chief, Contract Management Unit

ADDRESS

1501 Capitol Avenue, Suite 71.5178, MS 1802, PO Box 997377
Sacramento, CA 95899-7377**California Department of
General Services Use Only**☐ Exempt per:

Exhibit A
Scope of Work

1. Service Overview

The Contractor shall perform the licensing and certification function, inspection, consultation, investigation of complaints, and verify compliance with the licensing program for health facilities, clinics, agencies and centers located in Los Angeles County for which licensure is required by the California Health and Safety Code and Welfare and Institutions Code.

The Contractor's region shall be known between California Department of Public Health (CDPH) Licensing and Certification Program (L&C) and Los Angeles County, as the Los Angeles County Field Operations Branch. The Contractor will carry out CDPH policies, operate programs, issue Citations, assess penalties, collect fines, provide consultation and advice as may be requested by L&C, perform other related duties, and provide information as is appropriate for regional operation and as may be required by the State.

In order to avoid any conflict of interest, the Contractor relinquishes all licensing and certification functions for all Los Angeles County owned-and-operated health facilities, clinics, agencies, and centers. These functions shall be the responsibility of L&C.

The Chief, Health Facilities Inspection Division, Department of Public Health, County of Los Angeles, shall serve as the Contractor's principal executive in the execution of this agreement and to the extent allowed by law, will function in all matters, except as specified in Exhibit A (Scope of Work) provision 5.CC. as one of the four (4) Field Operations Branch Managers of the L&C Program, CDPH. The Chief, Health Facilities Inspection Division shall report directly to the Deputy Director for the Center for Healthcare Quality, CDPH or his or her designee.

2. Service Location

These services shall be performed at all applicable health care facilities, clinics, agencies and centers in the County of Los Angeles.

3. Service Hours

The services shall be provided during normal County working hours and days, except when otherwise specified by workload priorities.

4. Project Representatives

A. The project representatives during the term of this agreement will be:

California Department of Public Health	County of Los Angeles
Scott Vivona, Chief of Field Operations Licensing and Certification Program Telephone: (916) 440-7377 Fax: (916) 552-8988 E-mail: scott.vivona@cdph.ca.gov	James Lawson, Chief Health Facilities Inspection Division Telephone: (562) 345-6850 Fax: (562) 406-8801 E-mail: james.lawson@cdph.ca.gov

B. Direct all inquiries to:

California Department of Public Health	County of Los Angeles
Licensing and Certification Program Attention: Lois Welch P.O. Box 997377, MS 3202 Sacramento, CA 95899-7377 Telephone: (916) 650-6426 Fax: (916) 552-8988 E-mail: lois.welch@cdph.ca.gov	Administration Section Attention: Wayne Ballard 12440 East Imperial Highway, Room 522 Norwalk, CA 90650 Telephone: (562) 345-6854 Fax: (562) 406-8801 E-mail: wayne.ballard@cdph.ca.gov

Exhibit A
Scope of Work

- C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

5. Services to be Performed

Contractor shall administer an effective program as follows:

- A. The Contractor shall perform the licensing and certification function, inspection, consultation, investigation of complaints, and verify compliance with the licensing program for health facilities, clinics, agencies and centers located in Los Angeles County for which licensure is required by the California Health and Safety and Welfare and Institutions Code.
- B. The Contractor shall Survey, in accordance with CDPH, L&C workload priorities, all health care facilities, clinics, agencies and centers as required by, and in accordance with, the Health and Safety Code and the appropriate conditions of Participation or Conditions for Coverage in Title XVIII and XIX of the Social Security Act, and shall make the necessary follow-up visits to ensure compliance. When the Contractor has cited deficiencies during the course of a Survey, the Contractor may, as necessary, conduct a post Survey revisit to determine if the facility then meets the requirements for participation. When conducted, however, one revisit will be conducted after a Survey which found noncompliance and another before the expiration of the 6-month period by which a facility must be in substantial compliance to avoid termination of its provider agreement.
- C. The Contractor shall provide personnel to conduct Life Safety Code (LSC) Surveys for all licensed health facilities, clinics, agencies and centers within the County of Los Angeles. Necessary follow-up visits to ensure compliance are to be conducted. The Contractor shall provide for consultation with architects, the Office of Statewide Health Planning and Development (OSHDP), California Building Code, or the local fire authorities, as required, for technical interpretation of facility compliance with applicable provisions of the National Fire Protection Agency's Life Safety Code, in addition to providing professional consultation services to CDPH upon request.
- D. The Contractor shall fill vacant Health Facility Evaluator surveyor positions with registered nurses, as vacancies occur. However, the Contractor may continue to use non-registered nurse positions in sufficient numbers to conduct and meet the workload requirements for Life Safety Code surveys. This provision does not apply to consultant positions.
- E. The State retains the responsibility for establishment of program policies and standards, and enforcement actions relating to licensure, including denials, revocations and suspensions. Notwithstanding any other provisions of this agreement, the parties agree that this agreement is entered into pursuant to the authority of H&S Code Section 1257. The Contractor shall perform its duties described in this Agreement as an agent of the State.
- F. The State retains the responsibility to supervise and oversee the conduct of the Surveys performed in accordance with this Scope of Work. Although the Contractor shall retain full responsibility for all administrative functions associated with the personnel engaged in the Survey process, oversight of the Survey process itself shall fall to the State. The Contractor shall be included in discussions concerning Survey policies and procedures. The application of the resulting policies and procedures to the Survey process, however, shall be supervised by CDPH.
- G. The State retains the sole responsibility to supervise and oversee the conduct of the staffing audits performed in accordance with Exhibit A (Scope of Work). Although the Contractor shall retain full responsibility for all administrative functions associated with the personnel engaged in the staffing audit process, oversight of the staffing audit activities and process itself shall fall to the State.

Exhibit A
Scope of Work

- H. The Contractor shall provide necessary personnel to conduct inspections of hospitals as scheduled by the Joint Commission, a part of the Consolidated Accreditation and Licensing Survey team, and necessary follow-up visits to ensure compliance and provide assistance to the hospitals.
- I. The Contractor shall furnish the necessary staff, facilities, materials, and equipment to accomplish the licensing and certification functions herein delegated, and shall maintain all records and files pertaining to these functions. Specifically, the Contractor will provide a planned workload report to the State delineating the Surveys to be conducted by type of facility and type of Survey. The State shall provide the Contractor with reasonable notice of all mandated training sessions and will adjust field performance expectations for the hours lost to such training and associated travel not previously considered in the planned workload report.
- J. CDPH auditors assigned to LA County facilities shall have full access to all County-maintained information concerning those facilities. CDPH auditors shall also be granted access to County Offices, and shall be permitted use of Los Angeles County office resources, including, but not limited to, available telephones, docking stations, fax machines, and photocopiers, to assist in the conduct of the CDPH auditor's assigned workload.
- K. The State shall be allowed to conduct Look-Behind Surveys, at its discretion, for any Survey conducted by the Contractor. Los Angeles County facility files shall be accessible for this purpose.
- L. Upon written request from CDPH, the Contractor shall perform staffing audits and facility Surveys outside the County of Los Angeles to assist CDPH in meeting overall workload requirements, providing that the request does not interfere with the Contractor's abilities to meet its required workload.
- M. In the performance of this contract, the Contractor shall make available appropriate personnel to attend mandatory meetings as necessary with CDPH.
- N. The Contractor shall document time and effort of its personnel which perform Surveys and maintain files containing such documentation. Contractor personnel shall follow directions from CDPH to the Contractor on timekeeping policies and procedures.
- O. The Contractor shall develop protocols to ensure rotation of assignments of staff to the facilities they Survey. The rotation protocol must be submitted to CDPH within two months from the contract execution date and annually thereafter. The protocol must be reviewed and approved by CDPH and any changes to the protocol must be approved by CDPH in advance of implementation.
- P. The Contractor shall participate in the development and execution of quality assurance projects directed at identifying Skilled Nursing Facilities for pharmaceutical consultation participation.
- Q. The Contractor shall sufficiently staff medical, pharmacy, dietary, health information and rehabilitation consultants, trainers, information technology personnel, life safety code personnel, and staffing auditors to meet the activities set forth in Exhibit A (Scope of Work) and as approved by CDPH.
- R. The Contractor acknowledges that policy direction and workload prioritization is established by the State. The Contractor shall instruct its Managers, Medical, Pharmacy, Dietary, Health Information and Rehabilitation Consultants, Trainers, Information Technology Personnel, Life Safety Code Personnel, and Staffing Auditors to adhere to the policy directions, as determined by the respective State Chiefs for each discipline, and that staff are expected to and shall attend associated meetings directed by the State.

Exhibit A
Scope of Work

- S. The Contractor shall identify appropriate managers and supervisors to collaborate with the L&C Pharmaceutical Consultant Unit for deployment of State pharmaceutical consultants, who shall evaluate the implementation of Medication Error Reduction Plans required by general acute care hospitals and surgery clinics. This shall include, but is not limited to, coordination of inspections with designated Contractor supervisory and/or managerial staff responsible for listed health care facilities and access to facility files.
- T. The Contractor must adhere to the CDPH network infrastructure, encryption, and information security hardware and software protocols as they pertain to connectivity and interfacing with the CDPH L&C network infrastructure.
- U. Contractor personnel who perform Surveys shall attend the State Academy and the Basic Long Term Care federal course, and shall be Surveyor Minimum Qualifications tested (SMQT'd) prior to conducting long term care Surveys. The Contractor shall send all personnel to Federal and State training, as deemed appropriate by the State, to ensure statewide conformity with licensing and certification policies and procedures to be implemented in the course of this agreement.
- V. The Contractor shall adhere only to the L&C Policy and Procedure Manual of the L&C Program and policy and procedure documents developed by the State or the federal Government applicable to the conduct of Surveys or other work products that fall within the L&C Program.
- W. Contractor personnel that interact with the public shall adhere to the standards set forth in Exhibit F, Health Facilities Evaluator Nurse (HFEN) and Consultant Qualification Factors, a document provided to all new surveyors during office orientation.
- X. Contractor personnel shall be available to participate in, or lead, team projects involving development of policies and procedures to implement new laws, new federal workload requirements, and similar projects.
- Y. The Contractor shall work in conjunction with the Central Applications Unit (CAU) to approve licensing and certification applications that are processed by CAU, and shall follow up in routine processes. The Contractor shall cooperate with CAU to update, obtain or approve existing or new provider information on the Electronic Licensing Management System (ELMS), Automated Survey Processing Environment (ASPEN), and other databases.
- Z. The Chief and Assistant Chief, Health Facilities Inspection Division, Department of Public Health, County of Los Angeles shall participate in all field operations meetings, including conference calls, and shall meet monthly in Sacramento Headquarters with the Deputy Director for the Center for Healthcare Quality, CDPH, or his or her designee.
- AA. The Contractor shall be, during the period of this agreement and any extension thereof, subject to the terms and conditions of the agreement between the State of California and the Secretary of Health and Human Services Agency pursuant to Section 1864 of the Social Security Act, as amended.
- BB. The Contractor shall provide a workload and progress report by the tenth (10th) working day of each month following the month in which the work was completed. The report shall be in a format prescribed by the State.
- CC. The Contractor shall, during the period of this agreement, and any extension thereof, be subject to the State Survey and Certification Requirements as enacted by the Centers for Medicare and Medicaid Services (CMS) to encourage efficient program administration. In the event that Federal fiscal sanctions are levied against the State as a result of non-compliance by Los Angeles County with the terms and conditions of the agreement, the State may pass on 100% of the sanctions to Los

Exhibit A
Scope of Work

Angeles County directly attributable to the County's non-compliance via reduced reimbursements, provided the State has not redirected priorities in opposition to previously established federal workload expectations.

- DD. The Contractor shall inform, in writing, the CDPH L&C Aide and Technician Certification Section of any complaints or non-compliance issues relative to the administration of the nurse aide training, competency evaluation and nurse aide competency evaluation program, and home health aide training. The Contractor shall report non-compliance criteria as detailed in 42 Code of Federal Regulations sections 483.151 (nurse aides) and 484.36 (home health aides). The Contractor shall mail complaint and/or information to:

California Department of Public Health (CDPH)
Licensing and Certification Program
Aide and Technician Certification Section (ATCS)
ATTN: ATCS Chief
1615 Capitol Avenue, MS 3301
P.O. Box 997377
Sacramento, CA 95899-7377

- EE. The Contractor shall provide copies of all complaints received that involve misconduct by Certified Nurse Assistants (CNA), Home Health Aides (HHA) and Hemodialysis Technicians (CHT) to the Investigation Section of the Center for Healthcare Quality, CDPH. Referrals shall be made upon receipt of the initial complaint or as soon as specific individual CNAs, HHAs or CHTs are identified. Investigations of the certification of such individuals will be conducted by the Investigation Section. Copies of the result of these investigations shall be sent to the Contractor when the cases are finalized. The Contractor shall refer the complaints to:

California Department of Public Health
Licensing and Certification
Investigation Section
P.O. Box 1039
Baldwin Park, CA 91706
(626) 331-4752

- FF. Emergency Preparedness and Response

- 1) In accordance with emergency and disaster preparedness, response and recovery efforts, all Contractor personnel shall be oriented to L&C plans and directives related to emergencies and disasters. All Contractor personnel shall attend emergency and disaster preparedness, response and recovery training in accordance with training provided to all L&C district office staff.
- 2) In accordance with emergency and disaster preparedness, response and recovery efforts, the Contractor shall follow direction from L&C for implementation of emergency and disaster plans and directives, including actions such as, but not limited to:
 - a. Contacting facilities to determine the status of the facility and safety of patients.
 - b. Communicating with L&C headquarters response personnel (including, but not limited to, L&C Executive Staff, Field Operations Branch Chiefs, Emergency Preparedness and Disaster Response Section personnel) through meetings (typically held via conference calls).
 - c. Participating in CDPH sponsored medical/health related conference calls.

Exhibit A
Scope of Work

- d. Participating in local emergency management agencies' planning and response to the situation (as needed during the actual emergency).
- e. Submit written summary reports on the status of facilities and patient care to L&C headquarters.

6. Performance Measures

Contractor employees shall comply with the following performance measures:

- A. Follow established policies and procedures for reviewing and approving licensing and certification applications for facility applicants designated to the field offices (i.e., Home Health Agency [HHA], End Stage Renal Dialysis Clinics [ESRD], etc).
- B. Conduct initial Surveys for licensing and certification within prescribed policies, procedures, laws, and regulations.
- C. Pharmaceutical Consultant Participation on Skilled Nursing Facility (SNF) Surveys
 - 1) Properly and timely identify, on a quarterly basis, scheduled SNF Surveys that trigger medication-related Quality Indicators (QI).
 - 2) "Properly," as used in Provision 7A1, is defined by SNF QI Project Guidelines.
 - 3) "Timely", as used in Provision 7A1, is defined as by the 15th of the month prior to the start of calendar year quarter.
 - 4) Identification is for those SNFs that fall within the Pharmaceutical Consultant geographical assignment.
 - 5) Collective threshold is 95%.
 - 6) Participate on 90% of scheduled SNF Surveys that trigger three or more of the five medication related QIs.
 - 7) On a quarterly basis, each Pharmaceutical Consultant shall document identification and participation for all scheduled SNF Surveys on the SNF QI Tracking document in a timely and accurate manner. Threshold is 95%.
- D. Hospital Surveys
 - 1) Pharmaceutical Consultant will participate as a team member on 90% of all validation Surveys (sample, complaint and revisit) that includes the Condition of Participation for Pharmaceutical Services.
 - 2) Pharmaceutical Consultant will participate as a team member on 90% of Consolidated Accreditation Surveys (CALs).
- E. Communications

Consultants use effective communication skills to efficiently contribute to accomplishing the mission of L&C.

- 1) Calendar: Each consultant will maintain their Outlook calendar and make the calendar available to other L&C staff members.
- 2) Calendars will reflect the consultant's assigned duties and leave dates including:
 - a. Surveys.
 - b. Investigations.
 - c. L&C meetings.
 - d. Other events.

Exhibit A
Scope of Work

- 3) E-mail: Each consultant will effectively and courteously, receive and respond to electronic messages sent by other L&C staff members, State employees and other interested parties.
- 4) Telephone: Each consultant will effectively and courteously receive and respond to telephone messages and conversations. Return calls to providers or complainants within 48 hours.

F. Administrative

- 1) Submit weekly time sheets in a timely fashion as defined by no later than the fifth day of the following month. Threshold is 100%.
- 2) Complete Survey write ups in a timely fashion as defined by L&C policy and procedure and/or federal guidelines. Threshold is 90%.
- 3) Initiate and complete complaint investigations in a timely fashion as defined by L&C policy and procedure. Threshold is 90%.
- 4) Submit an annual plan to CDPH for rotation of Survey teams.

G. Nursing Homes

- 1) 10% of standard Surveys conducted must begin on weekend, prior to 8:00 am, or after 6:00 pm.
- 2) Frequency of Nursing Home Surveys-no later than 15.9 months after day of previous Survey. Average must be 12.9 months or less.
- 3) Frequency of Non-Nursing Home Surveys
 - a. HHA- no later than 36.9 months after the day of the previous Survey.
 - b. Institution for the Mentally Retarded (IMR) - no later than 12.0 months after the day of the previous Survey and within the Time Limited Agreement (TLA) End Date.
- 4) Accuracy of Documentation during Nursing Home Comparative Surveys
 - b. All deficiencies cited by the CMS Regional Office (RO) at a Scope and Severity level of "F" or above are correctly identified and cited by Contractor.
 - c. At least 80% of overall onsite findings were correctly identified by the Contractor and found by the RO.
 - d. All deficiencies at the level of immediate jeopardy were correctly identified and cited by the Contractor.
- 5) Conduct of Nursing Home Federal Oversight Support Surveys (FOSS)
 - a. Documentation of Non-Compliance (NH FOSS Surveys)-disparity rate is 20% or less between deficiencies identified onsite at Task 6 and deficiencies cited on CMS-2567.

H. Frequency of Data Entry (Non-Deemed Hospitals & Nursing Homes)

The number of days from the latest date of the Survey completion date to the data entry into Online Survey Certification and Reporting System (OSCAR), Online Data Input and Entry (ODIE), ASPEN cannot exceed 70 days.

I. Documentation of Deficiencies

- 1) Nursing Homes- 85% or above for each of 7 requirements.
- 2) Non-Nursing Homes- 85% or above for each of 6 requirements.

J. Complaints and Incidents

- 1) Correctly prioritize 90% or more of sampled intakes.
- 2) Timeliness of Complaint and Incident Investigations
 - a. Nursing Homes, ESRDs, non-deemed HHAs & non-deemed hospitals- Contractor initiates an investigation within 2 working days of receipt for 95% of all complaints and incidents where the intake is prioritized as IJ.

Exhibit A
Scope of Work

- b. Deemed Hospitals and HHAs- Contractor initiates an investigation within 2 working days of receipt of authorization from the RO for 95% of all complaints and incidents where the intake is prioritized as IJ.
 - c. Nursing Homes- Contractor initiates an investigation within 10 working days of prioritization for 95% of all complaints and incidents where the intake is prioritized as Non Immediate Jeopardy (IJ).
 - d. Deemed Hospitals- Contractor initiates an investigation within 45 calendar days of receipt of authorization from the RO for 95% of all complaints and incidents where the intake is prioritized as Non-IJ.
 - e. Non Long Term Care (LTC) Complaints- 70 days investigation completion after initiation.
 - f. Initiation of Non LTC Complaints-no longer than 6 months except adverse events.
- K. Timeliness of Emergency Medical Transport and Labor Act (EMTALA) Investigations
- 1) 95% of complaint investigations completed within 5 working days from RO approval or extension date.
 - 2) 95% of completed packets sent to the RO within 10 working days following the Survey exit date when a suspected violation is identified or 15 days when no violation is found.
 - 3) 80% of sample selection based on case selection methodology outlined in Appendix V, Task 2 of the State Operations Manual (SOM).
 - 4) 80% of cases Contractor documentation supports the Contractor's recommendation.
 - 5) 80% of cases CMS-2567 reflects the Contractor's documentation/recommendation.
- L. Quality of Investigation-85% or above for each of 5 criteria CMS uses to verify whether Contractor investigates complaints and incidents according to CMS policy for complaint/incident handling.
- M. Enforcement
- 1) Timeliness of Processing Immediate Jeopardy Cases-95% of Contractor's determination that there is an IJ to resident or patient safety that was not removed prior to the end of the Survey, SA adheres to a 23-day termination process.
 - 2) Timeliness of Mandatory Denial of Payment for New Admissions (DPNA) Notification for Nursing Homes-80% of cases or higher if nursing home is not in substantial compliance 3 months after the date of the original Survey, Contractor transfers the enforcement case to CMS by the 70th day or imposition notice is sent by the Contractor to the provider by the 70th day.
 - 3) Processing of Termination Cases for Non-Nursing Home Providers-80% of cases or better, which cite condition-level non-compliance, the Contractor adheres to the 90-day termination process.
 - 4) Contractor sends the 90-day termination packet to CMS by the 55th day from the last day of the Survey that found condition level non-compliance.
- N. Completion of 2567 to Facility Within Specified Timeframe:
- 1) Recertification Survey- 10 days.
 - 2) Initial Survey- 10 days (not sent to CMS).
 - 3) Licensing Survey- 10 days.
- O. IJ should be completed within 2 days with copy to facility & CMS. For General Acute Care Hospitals (GACH) - IJs to be sent to CMS and CMS to send to facility.
- P. Long Term Care Complaints completion within 45 days from initiation-5% improvement based on prior year data reports.

Exhibit A
Scope of Work

Q. Citation Write-Ups After Complete Investigation

- 1) B Citations-3 days for write up, 3 days for approval and issuance.
- 2) A Citations- 5 days for write up, 5 days for consultant review, 2 days for Branch Chief review, 3 days for approval and issuance.
- 3) A Citations involving death-5 days for write up, 5 days for consultant review, 5 days for legal review, 2 days for Branch Chief review, 3 days for approval and issuance.
- 4) AA Citation-5 days for write up, 5 days for consultant review, 5 days for legal review, 2 days for Branch Chief review, 3 days for approval and issuance.

R. Initiation of Hospital Adverse Events

- 1) 24 Hours for imminent danger of death or serious bodily harm.
- 2) 10 days for all other adverse events.
- 3) Completed within 45 days.

S. Initial and Change of Ownership (CHOW) applications must be processed within 30 days.

T. Supervisor audit of data input-Compare paper data to ASPEN/ ELMS data for Survey kits 5 times per quarter.

7. Scope of Work Changes

The Contractor or the State may propose changes or revisions to the activities, tasks, deliverables, and/or performance measures specified in the Scope of Work. Such changes or revisions shall be negotiated and amended into the contract.

8. Definitions

As used in this agreement, the following terms shall be construed to have the following meanings:

A. Survey

The activity conducted by the State or Contractor under the direction of CMS and within the scope of applicable State and Federal regulations and operating instructions whereby surveyors determine compliance or noncompliance.

B. Look-Behind Survey

The process in which State survey staff either: 1) perform a paper review of the survey findings and processes used during a recently concluded survey performed by Contractor staff; or 2) perform a similar survey in the same facility as was surveyed by Contractor staff for purposes of quality assurance.

C. Scope and Severity

A system of rating the seriousness of deficiencies. A "deficiency" is a regulatory requirement that is found not met during survey. For each deficiency, the surveyor determines the level of harm to the resident or resident(s) involved and the scope of the problem within the nursing home. The surveyor then assigns an alphabetical Scope and Severity value, A through L, to the deficiency. "A" is the least serious and "L" is one of the most serious ratings.

Exhibit A
Scope of Work

D. Citations

Class "AA" – Issued for violations that meet the criteria for a class "A" violation and that are determined to have been a direct proximate cause of death of a patient or resident of a long-term health care facility. In any action to enforce a Citation issued under this statute, the Contractor must prove all of the following:

1. The violation was a direct proximate cause of death of a patient or resident.
2. The death resulted from an occurrence of a nature that the regulation was designed to prevent.
3. The patient or resident suffering the death was among the class of persons for whose protection the regulation was adopted

Class "A" – Issued for violations determined to present either 1) imminent danger that death or serious harm to the patients or residents of the long-term health care facility would result there from, or 2) substantial probability that death or serious physical harm to patients or residents of the long-term health care facility would result there from.

Class "B" – Issued for violations determined to have a direct or immediate relationship to the health, safety, or security of long-term health care facility patients or residents, other than class "AA" or "A" violations.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the budget(s) attached hereto.
- B. Invoices shall include the Agreement Number and shall be submitted not more frequently than monthly in arrears to:

California Department of Public Health
Licensing and Certification Program
Attention: Contract Manager
P.O. Box 997377, MS 3202
Sacramento, CA 95899-7377

The State, at its discretion, may designate an alternate invoice submission address. A change in the invoice address shall be accomplished via a written notice to the Contractor by the State and shall not require an amendment to this Agreement.

- C. Invoices shall:
 - 1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead invoices must be signed by an authorized official, employee, or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
 - 2) Bear the Contractor's name as shown on the Agreement.
 - 3) Identify the billing and/or performance period covered by the invoice.
 - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this Agreement. Subject to the terms of this Agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this Agreement and approved by CDPH.

2. Timely Submission of Monthly Invoices

- A. Each monthly invoice for the month of July through May shall be submitted for payment no more than sixty (60) calendar days following the close of each month, unless an alternate deadline is agreed to in writing by the program contract manager.
- B. The Contractor shall submit the June (fiscal year end) invoice no more than one-hundred twenty (120) calendar days following the close of the month.
- C. If an invoice is submitted for payment more than the calendar days following the close of the month as specified in 2.A. and 2.B., the State shall assess a penalty of one percent (1%) of the total amount of the invoice compounded every thirty (30) days until submission of the invoice. Once the invoice has been received by the State, the penalty amount shall be calculated and subtracted from the approved invoice amount upon payment.

3. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to

Exhibit B
Budget Detail and Payment Provisions

Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Contractor to reflect the reduced amount.

4. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

5. Amounts Payable

- A. The amounts payable under this Agreement shall not exceed:

- 1) \$26,373,870.00 for the budget period of 07/01/08 through 06/30/09.
- 2) \$26,373,870.00 for the budget period of 07/01/09 through 06/30/10.
- 3) \$26,373,870.00 for the budget period of 07/01/10 through 06/30/11.

The contract amounts payable under this Agreement for the budget periods covering fiscal years 2009-10 and 2010-11 may be revised via contract amendment based on annual negotiations and funding availability.

- B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.
- C. The State shall pay the Contractor for employee salaries and benefits at the rate reflected and set forth in Exhibit B, Attachments I, II and III. The Contractor shall absorb any salary or benefit increases provided by the Contractor in excess of the current contracted rates, unless the State and the Contractor mutually agree and execute an amendment for such increases.

6. Timely Submission of Final Invoice

- A. A final undisputed invoice shall be submitted for payment no more than one-hundred twenty (120) calendar days following the expiration or termination date of this Agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", thus indicating that all payment obligations of the State under this Agreement have ceased and that no further payments are due or outstanding.
- B. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline. Written State approval shall be sought from the program contract manager prior to the expiration or termination date of this Agreement.
- C. The Contractor is hereby advised of its obligation to submit, with the final invoice, a "Contractor's Release (Exhibit G)" acknowledging submission of the final invoice to the State and certifying the approximate percentage amount, if any, of recycled products used in performance of this Agreement.

7. Budget Revisions and Line Item Shifts

Exhibit B
Budget Detail and Payment Provisions

8. Expense Allowability / Fiscal Documentation

- A. Invoices, received from a Contractor and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable Agreement costs.
- B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this Agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. If travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. For more information on allowable travel and per diem expenses and required documentation, see Exhibit H entitled, "Travel Reimbursement Information".
- E. Costs and/or expenses deemed unallowable are subject to recovery by CDPH. See provision #9 this exhibit entitled, "Recovery of Overpayments" for more information.

9. Recovery of Overpayments

- A. Contractor agrees that claims based upon a contractual Agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State and/or Federal Government by one of the following options:
 - 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - 2) A repayment schedule which is agreeable to both the State and the Contractor.
- B. The State reserves the right to select which option will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

10. State Survey and Certification Requirements

In the event that Federal fiscal sanctions are levied against the State as a result of non-compliance by Los Angeles County with the terms and conditions of the agreement, and in conjunction with Exhibit A,

Exhibit B**Budget Detail and Payment Provisions**

Provision BB., the State shall pass on 100% of the sanctions directly attributable to the County's non-compliance. These sanctions shall be passed on by a reduction of the fiscal year end (June) invoice amount.

11. Budget Change Proposal

If the Contractor desires an increase to the annual contract budget, the Contractor shall submit a Budget Change Proposal (BCP) including position and workload justifications and a proposed budget to the CDPH Contract Manager. For increases commencing July 1, 2009, the Contractor shall provide a BCP to the CDPH Contract Manager by July 7, 2008. Every year thereafter, the BCP must be submitted by May 1 annually for the subsequent Fiscal Year (FY) (i.e. May 1, 2009 for the FY commencing July 1, 2010) in order to allow CDPH to build the increase into its BCP requests. Increases to the contract budget are contingent upon Contractor submission of a BCP and approval through the annual budget process.

Exhibit B, Attachment 1
Year 1
(July 1, 2008 - June 30, 2009)

	# of PYs	# of Mths	Monthly Salary 7/1/08-12/31/08	Monthly Salary 1/1/09-6/30/09	Line Item Total
Personnel					
Chief, Health Facilities Inspection Division	1	12	10,120	10,424	123,264
Assistant Chief	1	12	8,757	9,020	106,662
Health Facilities Consultant, Dietary	1	3	5,372	5,533	16,599
Health Facilities Consultant, Nursing	0	12	9,293	9,571	0
Health Facilities Consultant, OT	2	12	8,311	8,560	202,452
Health Facilities Consultant, Pharmacy	1	12	10,325	10,635	125,760
Health Facilities Consultant, Pharmacy	2	9	10,325	10,635	189,570
Health Facilities Consultant, PT	0	12	7,569	7,796	0
Health Facilities Evaluator I	21	12	5,842	6,017	1,494,234
Health Facilities Evaluator II	6	12	6,168	6,353	450,756
Health Facilities Evaluator III	5	12	6,674	6,874	406,440
Health Facilities Evaluator, Nursing	76	12	*	*	6,683,140
Health Facilities Evaluator, Nursing	9	10	6,913	7,262	641,015
Health Facilities Program Manager	4	12	7,513	7,738	366,024
Int Typist Clerk	1	12	2,941	3,029	35,820
Medical Records Consultant	0	12	5,140	5,295	0
Physicians Specialist, MD	2	12	13,651	14,061	332,544
Senior Secretary III	1	12	4,521	4,657	55,068
Sr. Health Facilities Evaluator, NSG	14	12	**	**	1,311,583
Sr. Information System Analyst	1	12	7,681	7,911	93,552
Sr. Typist Clerk	18	12	3,313	3,412	726,300
Staff Assistant I	1	12	3,798	3,912	46,260
Staff Assistant II	2	12	4,588	4,726	111,768
Student Professional Worker I	1		0	0	23,920
Supervising Administrative Assistant II	1	12	6,674	6,874	81,288
Supp. Health Facilities Evaluator, NSG	5	12	***	***	504,086
Word Processor II	2	12	3,495	3,600	85,140
Total Personnel	178				14,213,246
Fringe Benefits (47.74% of Personnel)					6,785,404
Total Personnel + Fringe Benefits					20,998,649
Operating Expenses					1,302,300
Supplies/Office Expenses					231,250
Office Space - Rental					816,635
Training & Meeting					206,415
Photocopy Machine Lease					48,000
Equipment					539,700
Maintenance					80,000
Antivirus Software					89,450
Computer Upgrades/ Replacements					370,250
Travel					204,478
Indirect Costs (23.42% of Personnel)					3,328,742
Total FY 08/09 Contract Costs					26,373,870

* Monthly salaries vary as total salaries are calculated primarily based on actual salaries of current employees (salary ranges \$5,900 to \$7,861).

** Monthly salaries vary as total salaries are calculated primarily based on actual salaries of current employees (salary ranges \$7,262 to \$8,764).

*** Monthly salaries vary as total salaries are calculated primarily based on actual salaries of current employees (salary ranges \$7,936 to \$8,848).

Special Terms and Conditions

(For federally funded service contracts and grant awards)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract", "Contractor" and "Subcontractor" shall also mean, "grant", "Grantee" and "Subgrantee" respectively.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements	17. Human Subjects Use Requirements
2. Travel and Per Diem Reimbursement	18. Novation Requirements
3. Procurement Rules	19. Debarment and Suspension Certification
4. Equipment Ownership / Inventory / Disposition	20. Smoke-Free Workplace Certification
5. Subcontract Requirements	21. Covenant Against Contingent Fees
6. Income Restrictions	22. Payment Withholds
7. Audit and Record Retention	23. Performance Evaluation
8. Site Inspection	24. Officials Not to Benefit
9. Federal Contract Funds	25. Four-Digit Date Compliance
10. Intellectual Property Rights	26. Prohibited Use of State Funds for Software
11. Air or Water Pollution Requirements	27. Use of Small, Minority Owned and Women's Businesses
12. Prior Approval of Training Seminars, Workshops or Conferences	28. Alien Ineligibility Certification
13. Confidentiality of Information	29. Union Organizing
14. Documents, Publications, and Written Reports	30. Contract Uniformity (Fringe Benefit Allowability)
15. Dispute Resolution Process	31. Lobbying Restrictions and Disclosure Certification
16. Financial and Compliance Audit Requirements	

1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Public Health (CDPH).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDPH, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDPH may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDPH, the Contractor may request in writing to CDPH, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with contract funds.)

Reimbursement for travel and per diem expenses from CDPH under this agreement shall, unless otherwise specified in this agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDPH's Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the agreement, the new rates shall apply upon their effective date and no amendment to this agreement shall be necessary. Exceptions to DPA rates may be approved by CDPH upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to all agreements in which equipment, miscellaneous property, commodities and/or supplies are furnished by CDPH or expenses for said items are reimbursed with state or federal funds.)

a. Equipment definitions

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition.
- (2) **Minor equipment:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more that is listed on the CDPH Asset Management Unit's Minor Equipment List and is either furnished by CDPH or the cost is reimbursed through this agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the CDPH program contract manager.
- (3) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by CDPH or the cost is reimbursed through this agreement. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.

- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this agreement.

- (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDPH program contract manager, to have all remaining equipment purchased through CDPH's Purchasing Unit. The cost of equipment purchased by or through CDPH shall be deducted from the funds available in this agreement. Contractor shall submit to the CDPH program contract manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDPH. The equipment will be delivered to the Contractor's address, as stated on the face of the agreement, unless the Contractor notifies the CDPH program contract manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.

- d. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH program contract manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor

purchase that CDPH determines to be unnecessary in carrying out performance under this agreement.

- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDPH may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or miscellaneous property is furnished by CDPH and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the term equipment and/or miscellaneous property is used in Provision 4, the definitions in Provision 3, Paragraph a shall apply.

Unless otherwise stipulated in this agreement, all equipment and/or miscellaneous property that are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this agreement shall be considered state equipment and the property of CDPH.

- (1) CDPH requires the reporting, tagging and annual inventorying of all equipment and/or miscellaneous property that is furnished by CDPH or purchased/reimbursed with funds provided through this agreement.

Upon receipt of equipment and/or miscellaneous property, the Contractor shall report the receipt to the CDPH program contract manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDPH's Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDPH Funds) does not accompany this agreement, Contractor shall request a copy from the CDPH program contract manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or miscellaneous property to the CDPH program contract manager using a form or format designated by CDPH's Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDPH-Funded Equipment) does not accompany this agreement, Contractor shall request a copy from the CDPH program contract manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH program contract manager.
- (c) Contact the CDPH program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.

- b. Title to state equipment and/or miscellaneous property shall not be affected by its incorporation

or attachment to any property not owned by the State.

- c. Unless otherwise stipulated, CDPH shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or miscellaneous property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or miscellaneous property.
 - (1) In administering this provision, CDPH may require the Contractor and/or Subcontractor to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or miscellaneous property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDPH program contract manager.
- e. Unless otherwise stipulated by the program funding this agreement, equipment and/or miscellaneous property purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this agreement, shall only be used for performance of this agreement or another CDPH agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this agreement, the Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the CDPH program contract manager and shall, at that time, query CDPH as to the requirements, including the manner and method, of returning state equipment and/or miscellaneous property to CDPH. Final disposition of equipment and/or miscellaneous property shall be at CDPH expense and according to CDPH instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by CDPH immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, CDPH may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different CDPH agreement.

g. Motor Vehicles

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under this agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, the Contractor and/or Subcontractor shall return such vehicles to CDPH and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDPH.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDPH program contract manager.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to CDPH.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
 - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Public Health).
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.
 - [3] The insurance carrier shall notify the California Department of Public Health (CDPH), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDPH may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.

- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
- (2) The State may identify the information needed to fulfill this requirement.
- (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - (a) A local governmental entity or the federal government,
 - (b) A State college or university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Entities of any type that will provide subvention aid or direct services to the public,
 - (h) Entities and/or service types identified as exempt from advertising in State Administrative Manual Section 1233 subsection 3. View this publication at the following Internet address: <http://sam.dgs.ca.gov>.
- b. CDPH reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this agreement.
 - (1) Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDPH. CDPH may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDPH.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDPH, make copies available for approval, inspection, or audit.
- e. CDPH assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- f. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDPH to the Contractor, to permit CDPH or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by CDPH, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 32.

6. Income Restrictions

Unless otherwise stipulated in this agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this agreement shall be paid by the Contractor to CDPH, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDPH under this agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDPH, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.
 - (1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this agreement. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this agreement shall be amended to reflect any reduction in funds.
- d. CDPH has the option to invalidate or cancel the agreement with 30-days advance written notice or to amend the agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

- (1) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this agreement.
- (2) For the purposes of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing

those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

- (3) In the performance of this agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. Contractor hereby grants to CDPH, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDPH or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2006, etc.], California Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the California Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this agreement, which did not result from research and development specifically included in the agreement's scope of work, Contractor hereby grants to CDPH a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the agreement's scope of work, then Contractor agrees to assign to CDPH, without additional compensation, all its right, title and interest in and to such inventions and to assist CDPH in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon the these terms is unattainable, and CDPH determines that the Intellectual Property should be included in or is required for Contractor's performance of this agreement, Contractor shall obtain a license under terms acceptable to CDPH.

f. Warranties

- (1) Contractor represents and warrants that:
 - (a) It is free to enter into and fully perform this agreement.
 - (b) It has secured and will secure all rights and licenses necessary for its performance of this agreement.
 - (c) Neither Contractor's performance of this agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure

obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
 - (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
 - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDPH in this agreement.
 - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.
- (2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.
- (2) Should any Intellectual Property licensed by the Contractor to CDPH under this agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this agreement at no expense to CDPH. CDPH shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property

becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDPH shall be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

- (3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, CDPH may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDPH approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this contract and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.

- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH program contract manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH program contract manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contract communications) prepared as a requirement of this agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

15. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDPH program contract manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)

- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH program contract manager.
- e. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, grants, or subventions to other governmental agencies or units of government nor contracts with regional centers or area agencies on aging (H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
 - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
 - (4) If the Contractor submits to CDPH a report of an audit other than an OMB A-133 audit, the

Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.

- d. Two copies of the audit report shall be delivered to the CDPH program funding this agreement. The audit report must identify the Contractor's legal name and the number assigned to this agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDPH program contract manager shall forward the audit report to CDPH's Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
- e. The cost of the audits described herein may be included in the funding for this agreement up to the proportionate amount this agreement represents of the Contractor's total revenue. The CDPH program funding this agreement must provide advance written approval of the specific amount allowed for said audit expenses.
- f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
- g. Nothing in this agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
- h. Nothing in this provision limits the authority of the State to make audits of this agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
- i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
- j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this agreement, Contractor agrees that if any performance under this agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, CDPH shall act upon the proposal within 60 days after receipt of the written proposal. CDPH may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDPH will initiate an amendment to this agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDPH program funding this contract.

- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDPH may terminate this agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDPH shall have the right to annul this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this contract, CDPH may, at its discretion, withhold 10 percent (10%) of the face amount of the agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDPH receives a final report that meets the terms, conditions and/or scope of work requirements of this agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

CDPH may, at its discretion, evaluate the performance of the Contractor at the conclusion of this agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDPH. Negative performance evaluations may be considered by CDPH prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

25. Four-Digit Date Compliance

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

27. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this agreement. Furthermore, Grantee, by signing this agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDPH sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the agreement.

- (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.
- f. **Earned/Accrued Compensation**
- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
 - (2) For multiple year contracts, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the agreement. Holidays cannot be carried over from one contract year to the next. See Provision f (3)(b) for an example.
 - (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.
- (a) **Example No. 1:**
- If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a contract period of one year. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of the agreement, the Contractor during a one-year agreement term may only claim up to three weeks of vacation and twelve days of sick leave actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the agreement are not an allowable cost.
- (b) **Example No. 2:**
- If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).
- (c) **Example No. 3:**
- If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDPH, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded contracts in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract or grant or any extension or amendment of that contract or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDPH program contract manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Attachment 1

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

County of Los Angeles

Name of Contractor

Printed Name of Person Signing for Contractor

08-85192

Contract / Grant Number

Signature of Person Signing for Contractor

Date

Title

After execution by or on behalf of Contractor, please return to:

California Department of Public Health
(Name of the CDPH program providing the funds)
(Program's Street Address, Room Number, and MS Code)
P.O. Box 997377
Sacramento, CA 95899-7377

Attachment 2

CERTIFICATION REGARDING LOBBYING

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OMB
0348-0046

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. initial award c. post-award	3. Report Type: a. initial filing b. material change For Material Change Only: Year quarter date of last report
4. Name and Address of Reporting Entity: <div style="display: flex; justify-content: space-between;"> Prime Subawardee </div> <div style="display: flex; justify-content: space-between;"> Tier </div> <div style="display: flex; justify-content: space-between;"> , if known: </div> Congressional District, If known:		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, If known:
6. Federal Department/Agency: _____	7. Federal Program Name/Description: CDFA Number, if applicable:	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI): <div style="text-align: center;">(attach Continuation Sheets(s) SF-LLL-A, If necessary)</div>	b. Name and Address of Lobbying Entity (If individual, last name, first name, MI): <div style="text-align: center;">(attach Continuation Sheets(s) SF-LLL-A, If necessary)</div>	
11. Amount of Payment (check all that apply): \$ _____ actual _____ planned	13. Type of Payment (check all that apply): a. retainer b. one-time fee c. commission d. contingent fee e. deferred f. other, specify:	
12. Form of Payment (check all that apply): a. cash b. in-kind, specify: Nature Value		
14. Brief Description of Services Performed or to be Performed and Dates(s) of Service, including Officer(s), Employee(s), or Member(s) Contracted for Payment indicated in item 11: <div style="text-align: center;">(Attach Continuation Sheet(s) SF-LLL-A, If necessary)</div>		
15. Continuation Sheet(s) SF-LLL-A Attached: Yes _____ No _____		
16. Information requested through this form is authorized by Title 31, U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31, U.S.C., Section 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$19,000 and not more than \$100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only		Authorized for Local Reproduction Standard Form-LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipients at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF - LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and ZIP code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and ZIP code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CDFA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90401."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state, and ZIP code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
10. (b) Enter the full names of the Individual(s) performing services and include full address if different from 10.(a). Enter last name, first name, and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials, identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

<p>Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project, (0348-0046), Washington, DC 20503.</p>
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Exhibit E
Additional Provisions

1. Amendment Process

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

2. Cancellation / Termination

- A. This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
- B. Upon receipt of a notice of termination or cancellation from CDPH, Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
- C. Contractor shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.

3. Avoidance of Conflicts of Interest by Contractor

- A. CDPH intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, CDPH reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to CDPH review and prior approval.
- B. Conflicts of interest include, but are not limited to:
 - 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract.
 - 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDPH is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDPH to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDPH and cannot be resolved to the satisfaction of CDPH, the conflict will be grounds for terminating the contract. CDPH may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

Exhibit E
Additional Provisions

4. Freeze Exemptions

- A. Contractor agrees that any hiring freeze adopted during the term of this contract shall not be applied to the positions funded, in whole or part, by this contract.
- B. Contractor agrees not to implement any personnel policy, which may adversely affect performance or the positions funded, in whole or part, by this contract.
- C. Contractor agrees that any travel freeze or travel limitation policy adopted during the term of this contract shall not restrict travel funded, in whole or part, by this contract.
- D. Contractor agrees that any purchasing freeze or purchase limitation policy adopted during the term of this contract shall not restrict or limit purchases funded, in whole or part, by this contract.

Exhibit F
Health Facilities Evaluator Nurse (HFEN) and Consultant Qualification Factors

The HFEN/Consultant must possess or acquire the following qualifications factors. The number in parenthesis corresponds to 8 of the 10 qualification factors listed on the State's Performance for a Probationary Employee (Form STD 636) used for the evaluation of performance. (State STD 636 qualification factors listed at end of document)

- ♦ should be present or attained 4th month of employment
 - ♦♦ should be present or attained 8th month of employment
- By 12th month of employment, proficiency should be standard or outstanding in all factors listed below.

Professional Behavior

Represents CDPH in a dignified manner with co-workers, providers and the public. Your appearance needs to enhance, not detract from the authority that you are representing.

- 1. Demonstrates professional grooming and hygiene. (10) ♦**
- 2. Wears business attire when representing the Department to the public. Avoids flip flops, open-toed shoes without stockings, visible tattoos, limits visible body-piercing jewelry, avoids excessively long fingernails, wrinkled clothing, visible underwear, low cut tops, spaghetti straps, halter tops, bare mid-drift tops or pants, very short skirts, jeans, T-shirts with political or unseemly/offensive comments, hats within buildings, and perfume. (10) ♦**
- 3. Is punctual for all job related duties and appointments. (3, 4, 9) ♦**
- 4. Effectively interacts and establishes a friendly, persuasive rapport with others. (4, 9) ♦**
- 5. Listens actively in interactions with others. (4, 9) ♦**
- 6. Uses diplomacy (tact), courtesy, patience, politeness, empathy (ability to model understanding), and is well-mannered. (3, 9) ♦**
- 7. Handles stressful situations professionally. (1, 6, 9) ♦**
- 8. Focuses on specific job-related tasks and gets to the point of issues and concerns. (1, 2,) ♦**
- 9. Acknowledges what he/she does not know or can not do. (6) ♦**
- 10. Collaborates with his/her supervisor for personal and professional needs. (6, 9) ♦**

Time Management

The ability to complete tasks in an assigned timeframe.

- 1. Follows Departmental policies and procedures. (1, 2, 3) ♦**
- 2. Follows direction and guidance of the supervisors. (1, 6, 9) ♦**
- 3. Uses organizational skills to complete work. (3) ♦**
- 4. Seeks assistance to complete tasks, when needed, prior to due date. (6, 9) ♦**
- 5. Completes work based on assigned due dates. (3) ♦**

Exhibit F
Health Facilities Evaluator Nurse (HFEN) and Consultant Qualification Factors

6. **Prioritizes workload. (5) ♦ ♦**
7. **Multi-tasks, by doing more than one assignment at a time. (1, 3, 5) ♦ ♦**
8. **Synthesizes small and large amounts of information into concise, relevant facts. (1, 3, 5) ♦ ♦**
9. **Demonstrates that the amount of his/her investigation activities (time spent) is proportional to the results of the investigation. (1, 2, 3) ♦ ♦**

Team Membership
The ability to work together.

Will be a team member who...

1. **Actively listens (open-mindedness). (6, 9) ♦**
2. **Considers other's views (open-mindedness). (6, 9) ♦**
3. **Settles differences (compromise). (4, 6, 9) ♦**
4. **Does his/her fair share of work (responsibility). (3) ♦**
5. **Provides constructive feedback to others (cooperation). (4, 6, 9) ♦**
6. **Accepts feedback from others (cooperation). (4, 6, 9) ♦**
7. **Arrives at survey team meetings prepared to participate (responsibility). (3) ♦ ♦**
8. **Delivers information at the survey team meetings in a concise, objective manner (contributes). (1, 9) ♦ ♦**
9. **Adheres to the survey process (accountability). (1, 2) ♦ ♦**

Will be a team leader who...

1. **Coordinates survey activities offsite (organizes). (1, 2) ♦ ♦**
2. **Coordinates survey activities onsite (organizes). (1, 2) ♦ ♦**
3. **Assigns roles and responsibility to team members (delegates). (1, 2, 4) ♦ ♦**
4. **Performs as a team member sharing survey tasks, while being team leader. (1, 2, 4) ♦ ♦**
5. **Assures daily team meeting minutes are accurate and concise (responsibility). (1, 10) ♦ ♦**
6. **Keeps the supervisor informed of survey process (communicates). (1, 10) ♦ ♦**
7. **Submits completed survey packet to supervisor when due. (1, 10) ♦ ♦**
8. **Reviews and accepts facility's plans of correction as assigned. (1, 10) ♦ ♦**

Exhibit F
Health Facilities Evaluator Nurse (HFEN) and Consultant Qualification Factors

Investigative Skills

The ability to gather information using observation, interview, and document review.

1. Uses planning to organize and direct an investigation. (1, 3) ♦
2. Writes legible field notes, which are descriptive and thorough. All information is there. (1, 3) ♦
3. Documents all observations/interviews with date and time. (1, 3) ♦
4. Understands and utilizes principles of investigative interviews. (1, 2) ♦
5. Documents accurately where written clinical and facility evidence is obtained. (1, 3) ♦
6. Gathers information relevant to the potential concern. (1, 2) ♦
7. Verifies obtained information/evidence with facility's knowledgeable staff. (1, 9) ♦
8. Takes only necessary copies, which demonstrate facility's noncompliance. (1) ♦
9. Performs Federal survey tasks 1-7. (1, 2, 5) ♦ ♦

Critical Thinking

The active and skillful questioning and evaluation of evidence using reason and open and fair mindedness.

1. Diligent and persistent in seeking relevant, truthful information for investigations. (3, 5) ♦
2. Recognizes and removes personal judgments. (1, 3) ♦
3. Remains focused and limits investigation to relevance. (1, 2, 3) ♦ ♦
4. Assesses and coordinates the relationship of information gathered. (1, 2) ♦ ♦
5. Interprets information gathered to determine regulatory compliance. (1, 2) ♦ ♦
6. Identifies a deficient practice. (1, 2) ♦ ♦
7. Identifies the most appropriate regulation for the deficient practice. (1, 2) ♦ ♦
8. Demonstrates an understanding of "When is enough, enough?". (1, 2, 5) ♦ ♦
9. Passes the SMQT (federal credentialing to surveying). (requirement) (5) ♦ ♦

Writing Skills

The ability to create a document for the providers, the legal community, and the public that is accurate and understandable. Writing skills directly relate to the creditability of your work.

1. Writes, using only facts, to demonstrate the facility's deficient practice. (1, 2, 3) ♦

Exhibit F
Health Facilities Evaluator Nurse (HFEN) and Consultant Qualification Factors

2. Writes a deficient practice statement using source(s), extent(s), identifier(s), facility's violation(s), and resident outcome(s). (1, 2, 3) ♦
3. Does not use opinion. (1, 2, 3) ♦
4. Writes only to the regulation and not to the Interpretative Guidelines. (1, 2) ♦
5. Uses correct sentence structure, grammar, punctuation, and spelling. (1, 2, 3) ♦
6. Writes so that an 8th grader could understand. (1, 2, 3) ♦
7. Turns in completed documents that have been proofed and corrected. (3) ♦
8. Progresses toward independence in using the computer programs of ASPEN, Word, & Outlook. (1, 2) ♦
9. Complies with the 8 Principles of Documentation (POD) when writing 2567's. (1, 2, 3) ♦ ♦

CDPH 636 FORM- QUALIFICATION FACTORS: UNACCEPTABLE, IMPROVEMENT NEEDED, STANDARD, OUTSTANDING

1. **SKILL**—Expertness in doing specific tasks; accuracy; precision, completeness, neatness, quantity.
2. **KNOWLEDGE**—Extent of knowledge of methods, materials, tools, equipment, technical expressions and other fundamental object matter.
3. **WORK HABITS**—Organization of work; care of equipment, punctuality and dependability; industry; follows good practices or vehicle and personal safety.
4. **RELATIONSHIPS WITH PEOPLE**—Ability to get along with others; effectiveness in dealing with the public, other employees, patients or inmates.
5. **LEARNING ABILITY**—Speed and thoroughness in learning procedures, laws, rules and other details; alertness; perseverance.
6. **ATTITUDE**—Enthusiasm for the work; willingness to conform to job requirements and to accept suggestions for work improvement; adaptability.
9. **QUALITY SERVICE AND CUSTOMER SATISFACTION COMMITMENTS**—Consider the extent to which the employee is polite, prompt, and helpful; has a positive outlook; willingness to be responsive to customers' needs; promotes innovative solutions in the application of policies and procedures to the extent possible; gives clear and complete information; welcomes feedback; seeks guidance as necessary and strives to customer service excellence.
10. **FACTORS NOT LISTED ABOVE** (Use additional sheets if more space is needed)

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** 08-85192 entered into between the State of California Department of Health Services (CDHS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of \$** _____ and **dated** _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDHS or purchased with or reimbursed by contract funds)

Unless CDHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDHS, at CDHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): County of Los Angeles

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDHS Distribution: Accounting (Original) Program

Travel Reimbursement Information

(Mileage Increase Effective 7/1/08)

1. The following rate policy is to be applied for reimbursing the travel expenses of persons under contract. The terms "contract" and/or "subcontract" have the same meaning as "grantee" and/or "subgrantee" where applicable.
 - a. Reimbursement for travel and/or per diem shall be at the rates established for nonrepresented/excluded state employees. Exceptions to Department of Personnel Administration (DPA) lodging rates may be approved by *the California Department of Public Health (CDPH)* upon the receipt of a statement on/invoice indicating that such rates are not available.
 - b. Short Term Travel is defined as a 24-hour period, and less than 31 consecutive days, and is at least 50 miles from the main office, headquarters or primary residence. Starting time is whenever a contract or subcontract employee leaves his or her home or headquarters. "Headquarters" is defined as the place where the contracted personnel spends the largest portion of their working time and returns to upon the completion of assignments. Headquarters may be individually established for each traveler and approved verbally or in writing by the program funding the agreement. Verbal approval shall be followed up in writing or email.
 - c. Contractors on travel status for more than one 24-hour period and less than 31 consecutive days may claim a fractional part of a period of more than 24 hours. Consult the chart appearing on Page 2 of this exhibit to determine the reimbursement allowance. All lodging reimbursement claims must be supported by a receipt*. If a contractor does not or cannot present receipts, lodging expenses will not be reimbursed.

(1) Lodging (with receipts*):

Travel Location / Area	Reimbursement Rate
Statewide (excluding the counties identified below)	\$ 84.00 plus tax
Counties of Los Angeles and San Diego	\$110.00 plus tax
Counties of Alameda, San Francisco, San Mateo, and Santa Clara	\$140.00 plus tax

Reimbursement for actual lodging expenses that exceed the above amounts may be allowed with the advance approval of the Deputy Director of the California Department of *Public Health (CDPH)* or his or her designee. Receipts are required.

*Receipts from Internet lodging reservation services such as Priceline.com which require prepayment for that service, ARE NOT ACCEPTABLE LODGING RECEIPTS and are not reimbursable without a valid lodging receipt from a lodging establishment.

- (2) Meal/Supplemental Expenses (with or without receipts): With receipts, the contractor will be reimbursed actual amounts spent up to the maximum for each full 24-hour period of travel.

Meal / Expense	Reimbursement Rate
Breakfast	\$ 6.00
Lunch	\$ 10.00
Dinner	\$ 18.00
Incidental expenses	\$ 6.00

- d. Out-of-state travel may only be reimbursed if such travel is necessitated by the scope or statement of work and has been approved in advance by the program with which the contract is held. For out-of-state travel, contractors may be reimbursed actual lodging expenses, supported by a receipt, and may be reimbursed for meals and supplemental expenses for each 24-hour period computed at the rates listed in c. (2) above. For all out-of-state travel, contractors/subcontractors must have prior CDPH written or verbal approval. Verbal approval shall be confirmed in writing (email or memo).
- e. In computing allowances for continuous periods of travel of less than 24 hours, consult the chart appearing on Page 2 of this exhibit.
- f. No meal or lodging expenses will be reimbursed for any period of travel that occurs within normal working hours, unless expenses are incurred at least 50 miles from headquarters.

Travel Reimbursement Information

Exhibit H (Continued)

- If any of the reimbursement rates stated herein is changed by DPA, no formal contract amendment will be required to incorporate the new rates. However, CDPH shall inform the contractor, in writing, of the revised travel reimbursement rates and the applicable effective date of any rate change.

At CDPH's discretion, changes or revisions made by CDPH to this exhibit, excluding travel reimbursement policies established by DPA may be applied retroactively to any agreement to which a Travel Reimbursement Information exhibit is attached, incorporated by reference, or applied by CDPH program policy. Changes to the travel reimbursement rates stated herein may not be applied earlier than the date a rate change is approved by DPA.

- For transportation expenses, the contractor must retain receipts for parking; taxi, airline, bus, or rail tickets; car rental; or any other travel receipts pertaining to each trip for attachment to an invoice as substantiation for reimbursement. Reimbursement may be requested for commercial carrier fares; private car mileage; parking fees; bridge tolls; taxi, bus, or streetcar fares; and auto rental fees when substantiated by a receipt.
- Note on use of autos:** If a contractor uses his/her or a company car for transportation, the rate of reimbursement will be **58.5 cents** maximum per mile. If a contractor uses his/her or a company car "in lieu of" airfare, the air coach fare will be the maximum paid by the State. The contractor must provide a cost comparison upon request by the State. Gasoline and routine automobile repair expenses are not reimbursable.
- The contractor is required to furnish details surrounding each period of travel. Travel expense reimbursement detail may include, but not be limited to: purpose of travel, departure and return times, destination points, miles driven, mode of transportation, etc. Reimbursement for travel expenses may be withheld pending receipt of adequate travel documentation.
- Contractors are to consult with the program with which the contract is held to obtain specific invoicing procedures.

Per Diem Reimbursement Guide

Length of travel period	This condition exists...	Allowable Meal(s)
Less than 24 hours	Trip begins at or before 6 a.m. and ends at or after 9 a.m.	Breakfast may be claimed.
Less than 24 hours	Trip begins at or before 4 p.m. and ends at or after 7 p.m.	Dinner may be claimed.
<i>Contractor may not claim lunch or incidentals on one-day trips. When trips are less than 24 hours and there's no overnight stay, meals claimed are taxable.</i>		
24 hours	Trip begins at or before 6 a.m.	Breakfast may be claimed.
24 hours	Trip begins at or before 11 a.m.	Lunch may be claimed.
24 hours	Trip begins at or before 5 p.m.	Dinner may be claimed.
More than 24 hours	Trip ends at or after 8 a.m.	Breakfast may be claimed.
More than 24 hours	Trip ends at or after 2 p.m.	Lunch may be claimed.
More than 24 hours	Trip ends at or after 7 p.m.	Dinner may be claimed.
<i>Contractor may not claim meals provided by the State, meals included in hotel expenses or conference fees, meals included in transportation costs such as airline tickets, or meals that are otherwise provided. Snacks and continental breakfasts such as rolls, juice, and coffee are not considered to be meals.</i>		

Exhibit I
HIPAA Business Associate Addendum

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The California Department of Public Health ("CDPH") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI") pursuant to HIPAA regulations.
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement, Contractor is the Business Associate of CDPH that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDPH and creates, receives, maintains, transmits, uses or discloses PHI.
- F. CDPH and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations.
- G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations, and other applicable laws.
- H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms defined in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

1. Permitted Uses and Disclosures of PHI by Business Associate

- A. Permitted Uses and Disclosures.** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of CDPH, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDPH.
- B. Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
 - 1) Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate

Exhibit I
HIPAA Business Associate Addendum

obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to CDPH. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDPH with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDPH.

2. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDPH; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide CDPH with its current and updated policies.
- C. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of CDPH at the end of the contract period. These steps shall include, at a minimum, compliance with all of the data system security precautions set forth in Exhibit __, the CDPH Information Security Office, Information Systems Security Requirements for Projects (SR1 CDPH-ISO Project Requirements).

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDPH.

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.
- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of CDPH, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to CDPH and Individuals.** To provide access as CDPH may require, and in the time and manner designated by CDPH (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDPH (or, as directed by CDPH), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of

Exhibit I
HIPAA Business Associate Addendum

records maintained for CDPH that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDPH health care component health plans; or those records used to make decisions about individuals on behalf of CDPH. Business Associate shall use the forms and processes developed by CDPH for this purpose and shall respond to requests for access to records transmitted by CDPH within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

- G. Amendment of PHI.** To make any amendment(s) to PHI that CDPH directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDPH.
- H. Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDPH, or created or received by Business Associate on behalf of CDPH, available to CDPH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDPH or by the Secretary, for purposes of determining CDPH's compliance with the HIPAA regulations.
- I. Documentation of Disclosures.** To document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. Notification of Breach.** During the term of this Agreement:
- 1) Discovery of Breach.** To notify CDPH *immediately by telephone call plus email or fax* upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person, or *within 24 hours by email or fax* of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDPH ITSD Help Desk. Business Associate shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
 - 2) Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. *Within 72 hours of the discovery*, to notify the CDPH Program Contract Manager(s), the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
 - i. What data elements were involved and the extent of the data involved in the breach,
 - ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
 - iv. A description of the probable causes of the improper use or disclosure; and

Exhibit I
HIPAA Business Associate Addendum

- v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the CDPH Program Contract Managers, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer shall approve the time, manner and content of any such notifications.
- 5) **CDPH Contact Information.** To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0505 Sacramento, CA 95899-7377 Email: privacy@cdph.ca.gov Telephone: (916) 440-7700	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

- 1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PHI.
- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.

Exhibit I
HIPAA Business Associate Addendum

- 3) Business Associate shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.

3. Obligations of CDPH

CDPH agrees to:

- A. *Notice of Privacy Practices.*** Provide Business Associate with applicable and relevant Notice(s) of Privacy Practices that CDPH HIPAA-covered healthcare components produce in accordance with 45 CFR 164.520, as well as any changes to such notice(s).
- B. *Permission by Individuals for Use and Disclosure of PHI.*** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. *Notification of Restrictions.*** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDPH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. *Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDPH.

4. Audits, Inspection and Enforcement

From time to time, CDPH may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDPH Privacy Officer or the CDPH Chief Information Security Officer in writing. The fact that CDPH inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does CDPH's:

- A. Failure to detect or
- B. Detection but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH's enforcement rights under this Agreement and this Addendum.

5. Termination

- A. *Termination for Cause.*** Upon CDPH's knowledge of a material breach of this Addendum by Business Associate, CDPH shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDPH;
 - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.

Exhibit I
HIPAA Business Associate Addendum

- B. *Judicial or Administrative Proceedings.*** Business Associate will notify CDPH if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDPH may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDPH may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. *Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall promptly return or destroy all PHI received from CDPH (or created or received by Business Associate on behalf of CDPH) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

6. Miscellaneous Provisions

- A. *Disclaimer.*** CDPH makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDPH's request, Business Associate agrees to promptly enter into negotiations with CDPH concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDPH may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDPH pursuant to this Section or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding and security of PHI that CDPH in its sole discretion deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. *Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. *No Third-Party Beneficiaries.*** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CDPH or

Exhibit I
HIPAA Business Associate Addendum

Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

- E. *Interpretation.*** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. *Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.*** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.
- H. *No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Exhibit J
Information Confidentiality and Security Requirements

1. **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
 - A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
 - D. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. **It is CDPH's policy to consider all information about individuals private unless such information is determined to be a public record.** This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request. Personal Information includes the following:
2. **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI), except for statistical information not identifying any such person.
3. The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
5. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
6. The Contractor shall observe the following requirements:
 - A. **Safeguards.** The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of CDPH. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, including at a minimum, the safeguards set forth in Exhibit __, the SR1 CDPH-ISO Project Requirements.

Exhibit J
Information Confidentiality and Security Requirements

- B. **Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with CDPH.
- C. **Training.** The Contractor shall provide training on its data privacy and security policies at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDPH under this Agreement and use or disclose PSCI.
- 1) The Contractor shall require each employee who receives data privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
 - 2) The Contractor shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.
- D. **Discovery and Notification of Breach.** The Contractor shall notify CDPH **immediately by telephone call plus email or fax** upon the discovery of breach of security of PSCI in computerized form if the PSCI was, or is reasonably believed to have been, acquired by an unauthorized person, **or within twenty-four (24) hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PSCI in violation of this Agreement, this provision, the law, or potential loss of confidential data affecting this Agreement. Notification shall be provided to CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PSCI, notification shall be provided by calling the CDPH I.T. Service Desk. Contractor shall take:
- 1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - 2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- E. **Investigation of Breach.** The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI and within seventy-two (72) hours of the discovery, shall notify the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
- 1) What data elements were involved and the extent of the data involved in the breach,
 - 2) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PSCI,
 - 3) A description of where the PSCI is believed to have been improperly transmitted, sent, or utilized,
 - 4) A description of the probable causes of the improper use or disclosure; and
 - 5) Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- F. **Written Report.** The Contractor shall provide a written report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well

Exhibit J**Information Confidentiality and Security Requirements**

as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

- G. **Notification of Individuals.** The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer shall approve the time, manner and content of any such notifications.
- H. **Affect on lower tier transactions.** The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
7. **Contact Information.** To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0505 Sacramento, CA 95899-7377 Email: privacy@cdph.ca.gov Telephone: (916) 440-7700	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

CONTRACTOR EQUIPMENT PURCHASED WITH CDPH FUNDS

CDPH Program Name: Licensing and Certification

CDPH Program Contract Manager: **Marissa Revelino**

CDPH Program Contract Manager's Telephone Number: (916) 322-8492

Date of this Report:

Date of this Report:

[illegible]

INSTRUCTIONS FOR CDPH 1203 (Please read carefully.)

The information on this form will be used by the California Department of Public Health (CDPH) Asset Management (AM) to tag contract equipment and/or property (see definitions A, and B) which is purchased with CDPH funds and is used to conduct state business under this contract. After the Standard Agreement has been approved and each time state/CDPH equipment and/or property has been received, the CDPH Program Contract Manager is responsible for obtaining the information from the Contractor and submitting this form to CDPH AM. The CDPH Program Contract Manager is responsible for ensuring the information is complete and accurate. (See *Health Administrative Manual (HAM)*, Section 2-1060 and Section 9-2310.)

Upon receipt of this form from the CDPH Program Contract Manager, AM will fill in the first column with the assigned state/ CDPH property tag, if applicable, for each item (See definitions A and B). AM will return the original form to the CDPH Program Contract Manager, along with the appropriate property tags. The CDPH Program Contract Manager will then forward the property tags and the original form to the Contractor and retain one copy until the termination of this contract. The Contractor should place property tags in plain sight and, to the extent possible, on the item's front left-hand corner. The manufacturer's brand name and model number are not to be covered by the property tags.

1. If the item was shipped via the CDPH warehouse and was issued a state/CDPH property tag by warehouse staff, fill in the assigned property tag. If the item was shipped directly to the Contractor, leave the first column blank.

2. Provide the quantity, description, purchase date, base unit cost, and serial number (if applicable) for each item of:

A. Major Equipment:

- Tangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more.
- Intangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more (e.g., software, video).

These items are issued green numbered state/ CDPH property tags.

B. Minor Equipment/Property: Specific tangible items with a life expectancy of one (1) year or more that have a base unit cost less than \$5,000. **These items are issued green unnumbered "BLANK" state/ CDPH property tags** with the exception of the following, which are issued numbered tags: Personal Digital Assistant (PDA), PDA/cell phone combination (Blackberries), laptops, desktop personal computers, LAN servers, routers, and switches. NOTE: It is CDPH policy not to tag modular furniture. (See your Federal rules, if applicable.)

3. Provide the CDPH Purchase Order (STD 65) number if the items were purchased by CDPH. (See HAM, Section 2-1050.1.)

4. If a vehicle is being reported, provide the Vehicle Identification Number (VIN) and the vehicle license number to CDPH Vehicle Services. (See HAM, Section 2-10050.)

5. If all items being reported do not fit on one form, make copies and write the number of pages being sent in the upper right-hand corner (e.g., "Page 1 of 3.") The CDPH Program Contract Manager should retain one copy and send the original to: California Department of Public Health, Asset Management, MS 1801, P.O. Box 997377, 1501 Capitol Avenue, Sacramento, CA 95899-7377.

6. Property tags that have been lost or destroyed must be replaced. Replacement property tags can be obtained by contacting AM at (916) 650-0124.

7. Use the version on the CDPH Intranet forms site. The CDPH 1203 consists of one page for completion and one page with information and instructions.

Exhibit L

INVENTORY/DISPOSITION OF CDPH-FUNDED EQUIPMENT

Current Contract Number: 08-85192	Date Current Contract Expires: 06/30/11
Previous Contract Number (if applicable): 05-45391	CDPH Program Name: Licensing and Certification
Contractor's Name: County of Los Angeles	CDPH Program Contract Manager: Marissa Revelino
Contractor's Complete Address: 12440 E Imperial Hwy, Fl 5, Rm 522 Norwalk, CA 90650	CDPH Program Address: 1615 Capitol Ave, MS 3202, PO Box 997377 Sacramento, CA 95899-7377
Contractor's Contact Person: Wayne Ballard	CDPH Program Contract Manager's Telephone Number: (916) 322-8492
Contact's Telephone Number: (562) 345-6854	Date of this Report:

(THIS IS NOT A BUDGET FORM)

[illegible]

INSTRUCTIONS FOR CDPH 1204 (Please read carefully.)

The information on this form will be used by the California Department of Public Health (CDPH) Asset Management (AM) to: (a) conduct an inventory of CDPH equipment and/or property (see definitions A, and B) in the possession of the Contractor and/or Subcontractors, and (b) dispose of these same items. Report all items, regardless of the items' ages, per number 1 below, purchased with CDPH funds and used to conduct state business under this contract. (See *Health Administrative Manual (HAM)*, Section 2-1060 and Section 9-2310.)

The CDPH Program Contract Manager is responsible for obtaining information from the Contractor for this form. The CDPH Program Contract Manager is responsible for the accuracy and completeness of the information and for submitting it to AM.

Inventory: List all CDPH tagged equipment and/or property on this form and submit it within 30 days prior to the three-year anniversary of the contract's effective date, if applicable. **The inventory should be based on previously submitted CDPH 1203s,** "Contractor Equipment Purchased with CDPH Funds." AM will contact the CDPH Program Contract Manager if there are any discrepancies. (See HAM, Section 2-1040.1.)

Disposal: (*Definition: Trade in, sell, junk, salvage, donate, or transfer, also, items lost, stolen, or destroyed (as by fire).*) The CDPH 1204 should be completed, along with a "Property Survey Report" (STD. 152) or a "Property Transfer Report" (STD. 158), whenever items need to be disposed of; (a) during the term of this contract and (b) 30 calendar days before the termination of this contract. After receipt of this form, the AM will contact the CDPH Program Contract Manager to arrange for the appropriate disposal/transfer of the items. (See HAM, Section 2-1050.4.)

1. List the state/ CDPH property tag, quantity, description, purchase date, base unit cost, and serial number (if applicable) for each item of;

A. Major Equipment: **(These items were issued green numbered state/ CDPH property tags.)**

- Tangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more.
- Intangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more (e.g., software, video.)

B. Minor Equipment/Property:

Specific tangible items with a life expectancy of one (1) year or more that have a base unit cost less than \$5,000. The minor equipment and/or property items were issued green unnumbered "BLANK" state/ CDPH property tags with the exception of the following, which are issued numbered tags: Personal Digital Assistant (PDA), PDA/cell phone combination (Blackberries), laptops, desktop personal computers, LAN servers, routers and switches.

2. If a vehicle is being reported, provide the Vehicle Identification Number (VIN) and the vehicle license number to CDPH Vehicle Services. (See HAM, Section 2-10050.)

3. If all items being reported do not fit on one page, make copies and write the number of pages being sent in the upper right-hand corner (e.g. "Page 1 of 3.")

4. The CDPH Program Contract Manager should retain one copy and send the original to: California Department of Public Health, Asset Management, MS1801, P.O. Box 997377, 1501 Capitol Avenue, Sacramento, CA 95899-7377.

5. Use the version on the CDPH Intranet forms site. The CDPH 1204 consists of one page for completion and one page with information and instructions.

For more information on completing this form, call AM at (916) 650-0124.

COUNTY OF LOS ANGELES

REQUEST FOR APPROPRIATION ADJUSTMENT

DEPT'S. NO. 295

DEPARTMENT OF PUBLIC HEALTH

AUDITOR-CONTROLLER.

THE FOLLOWING APPROPRIATION ADJUSTMENT IS DEEMED NECESSARY BY THIS DEPARTMENT. WILL YOU PLEASE REPORT AS TO ACCOUNTING AND AVAILABLE BALANCES AND FORWARD TO THE CHIEF ADMINISTRATIVE OFFICER FOR HIS RECOMMENDATION OR ACTION.

ADJUSTMENT REQUESTED AND REASONS THEREFOR

FISCAL YEAR 2008/09

4-VOTE

SOURCES:

Public Health Services
A01 - PH - 88 - 8831 - 23450
State Other \$ 2,065,000
Increase Revenue

USES:

Public Health Services
A01 - PH - 1000 - 23450
Salaries & Employee Benefits \$ 1,013,000
Increase Appropriation

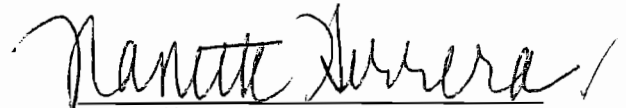
Public Health Services
A01 - PH - 2000 - 23450
Services & Supplies 1,052,000
Increase Appropriation

Total \$ 2,065,000

Total \$ 2,065,000

JUSTIFICATION

To request increases in the Salaries & Employee Benefits and Services & Supplies appropriations to support Public Health Services verification of licensure and certification compliance of local health facilities, clinics and agencies which require licensure. Funding is provided by the California Department of Public Health for Fiscal Year 2008/09. There is no impact to Net County cost.



Nanette Herrera

Division Chief, Controller's Division

CHIEF ADMINISTRATIVE OFFICER'S REPORT

REFERRED TO THE CHIEF
ADMINISTRATIVE OFFICER FOR

ACTION

RECOMMENDATION

AUDITOR-CONTROLLER

BY

NO. 095

Karin Jickura
Dec 15 20 08

APPROVED AS REQUESTED

AS REVISED

December 24, 2008

CHIEF ADMINISTRATIVE OFFICER

APPROVED (AS REVISED):
BOARD OF SUPERVISORS

20

BY

DEPUTY COUNTY CLERK